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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

CAPANA SWISS ADVISORS AG, a Swiss
corporation; AMERIMARK AUTOMOTIVE
AG, a Swiss corporation,

Plaintiffs,

vs.

RYMARK, INC., a Utah corporation;
NICHOLAS THAYNE MARKOSIAN, an
individual; JOHN KIRKLAND, an individual;
and VICKY SMALL, an individual,

Defendants.

**OPPOSITION TO DEFENDANTS'
SHORT FORM DISCOVERY MOTION
TO COMPEL**

Civil Case No. 2:23-cv-00467

District Judge Robert J. Shelby

Magistrate Judge Cecilia M. Romero

Plaintiffs respectfully submit their Opposition to Defendants' Short Form Discovery Motion to Compel (ECF No. 52). Discovery is ongoing. Both Plaintiffs and Defendants are in the process of producing additional documents. This motion is premature.

DEMAND FOR ALL DOCUMENTS RELATED TO U.S. LAW

Defendants demand *all* documents “related to [Plaintiffs’] compliance with the laws of the United States.” Defendants’ RFP 6. As Plaintiffs have stated in multiple meet-and-confer discussions, this request is impossibly overbroad, vague and not likely to lead to the discovery of admissible evidence. Defendants now contend they will “compromise” and limit their request to six topics, including “any tax law promulgated by the United States, including but not limited to those referenced in IRS Publication 515.” Defendants’ purported “offer” is hardly a workable limit to their admitted fishing expedition. Notably, IRS Publication 515 is 87 pages long and refers to scores of different tax code. Title 26 of the U.S. Code (the Internal Revenue Code, containing all U.S. tax laws) is 724 pages long with hundreds of sections. There are no tax claims at issue here.

Plaintiffs acknowledge the broad discovery privileges in civil litigation. *See, e.g., Regan-Touhy v. Walgreen Co.*, 526 F.3d 641, 649 (10th Cir. 2008). However, discovery is subject to the proportionality requirements of Fed. R. Civ. P. 26(b)(1), including “whether the burden or expense of the proposed discovery outweighs its likely benefit.” *Id.* The law is clear that “a defendant may not use discovery as a fishing expedition” to haphazardly search for a proverbial smoking gun. *Anthony v. United States*, 677 F.2d 870, 880 (10th Cir. 1981). *See also Pipkin v. Acumen*, No. 1:18-cv-00113-HCN-PMW, 2019 WL 6324633, at *2 (D. Utah Nov. 26, 2019); *Source Direct Holdings, Inc. v. Intehritas, Inc.*, No. 2:08–CV–520–DB–DN, 2009 WL 3460279, at *4 (D. Utah Oct. 20, 2009).

DEMAND FOR ALL ORBITAL/BERNHARDT DOCUMENTS WITHOUT LIMITATION

Likewise, Defendants’ continued demand for documents relating to Orbital and Shaen Bernhardt is another attempt to “fish” for documents. Plaintiffs already agreed to provide

documents relating to Orbital and Shaen Bernhardt. Defendants initially agreed to limit this request documents “related to, with, or about Orbital AG and Shaen Bernhardt, *and that also relate to Defendants and/or any AmeriMark entity.*” Defendant’s January 17, 2024 Ltr. Based on their most recent motion (ECF No. 52), Defendants appear to have rescinded that compromise, arguing now that they need all documents without limitation because Shaen Bernhardt and Orbital are “central figures in this case.” Neither Orbital nor Shaen Bernhard are parties to this action. While they may have discoverable information, discovery should be limited to Orbital AG and Shaen Bernhardt *to the extent* they are related to the parties at suit. Defendants’ fishing expedition coupled with their continuous, baseless accusations of fraud, makes clear that they are grasping at straws and trying to create issues where they do not exist.

In any event, Defendants are in the process of process additional documents. Defendants’ motion is premature.

Dated: March 22, 2024.

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By: /s/ Erik A. Christiansen
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March 2024, I filed the foregoing
OPPOSITION TO DEFENDANTS' SHORT FORM DISCOVERY MOTION TO COMPEL
via the Court's CM/ECF system, which provided notice of such filing to all counsel of record.

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